

Shifting the Burden:
Forest Tax Abatement Programs in
the Adirondack Park



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**Shifting the Burden:
Forest Tax Abatement Programs in the Adirondack Park**

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From the DEC Files...*

*Names of parties in documents removed by the Adirondack Council

EXECUTIVE SUMMARY

Flawed from the outset, New York State's property tax abatement programs (sections 480 and 480-a of the Real Property Tax Law) for forest lands need serious reform. This unfunded state mandate on local governments is increasingly disrupting the budgets of small towns in the Adirondack Park. The programs are unfairly and increasingly shifting the tax burden on over a million acres within those communities from large to small landowners.

Interviews and research conducted by the staff of the Adirondack Council reveal many other concerns. The division of the Department of Environmental Conservation (DEC) that administers the forest tax programs is understaffed. Town assessors and state foresters alike believe that enforcement is inadequate. Commercial landowners find the state programs cumbersome, and assert that many communities have raised their assessment on property that is not enrolled in the programs to make up for lost revenue. Many stakeholders would like to see the programs expanded beyond timber harvesting to allow for open space protection

The programs are failing to properly protect forest and water resources in the Adirondacks. Landowners can build leased cabins and access roads without review of their impact on water quality. Changes in technology have moved recreational leases from occasional hunting and fishing cabins to year-round vacation homes. Forest harvesting practices permitted under the state management plans endorse historical approaches like clear-cutting, but do little to promote modern concepts of sustainable harvesting.

Many of these problems were inherited by Governor Pataki and his three DEC Commissioners and by the preceding Cuomo Administration. In 1992, state agencies admitted that they had few records and little information about what was happening on over 800,000 acres of land in the Adirondack Park enrolled in the forest tax abatement programs between 1956 and 1976. Although adequate information was not on file, these landowners continued to receive significant property tax benefits. Little has changed. The management problems and fiscal burdens associated with the programs continue to deteriorate, as new enrollments in the Adirondack Park steadily increase.

In 1993, the problems with the forest tax laws were recognized by the State Legislature. The Legislature commissioned a state investigation and report, following a series of public hearings across New York. The following year, Governor Mario Cuomo proposed a series of reforms that were not acted on by the Legislature. A decade later, this report illustrates the continued need for reform and perhaps radical revision of how the State of New York approaches timber management and open space protection in the Adirondack Park.

Recommendations of this report include:

The New York State Legislature should include in the 2004-2005 State Budget provisions to:

- Provide full state reimbursement to municipalities impacted by state tax timber tax abatement programs in the Adirondack Park.
- Direct the collection of stumpage fees from timber harvesting under the timber tax abatement programs to the State of New York to help offset the costs of the program.
- Require an application fee and an annual filing fee for the 480-a program.

The New York State Department of Environmental Conservation should revise its regulations to:

- Accept third party “green certified” sustainable harvesting programs as an alternative to the current requirement of timber harvesting management plans.
- Require participating landowners to submit a siting plan to minimize the environmental impact of the location of recreational leased cabins and the construction of roadways.

The State Legislature should form a Joint Conference Committee to consider the establishment of a new forest tax abatement program in the Adirondack Park to:

- Expand the scope of the program to forest stewardship and wildlife habitat and open space protection.
- Abolish the existing 480 and 480-a real property tax programs, allowing landowners to transition without penalty into a new program.

INTRODUCTION

Sections 480 and 480-a of the Real Property Tax Law, often referred to as the Fisher Tax Laws, provide property tax abatement for forest landowners in New York State who reserve their land for timber production rather than development. More than a million acres of privately-owned forest land are enrolled in New York,¹ with most of those parcels located within the Adirondack Park. The State Legislature, in its statement of legislative intent in 1974, stated the law had this purpose: “to provide a means by which present and future forest lands may be protected and enhanced as a whole segment of the state’s economy and as an economic and environmental resource of major importance.”

Unfortunately, tax abatement programs for owners of private forest lands are failing to adequately protect forest lands or to enhance the economy of the Adirondack Park. The laws have had a negative impact on the tax structure of local governments. The state does not reimburse localities for the loss of revenue from these programs and the tax burden is shifted onto other taxpayers in the community.

That burden has become heavier each year as private landowners enroll more parcels in the Adirondacks. In fact, more than one-half of the towns in the Park with lands enrolled have seen more than one percent of their tax base eroded by the program. In some towns, the tax shift has reached well over 5%.

There have been several attempts in recent sessions of the New York State Legislature to have the state reimburse localities for the lost revenue. In his 2004-2005 budget submittals, Governor George Pataki proposed partial reimbursement to localities across the state. Despite the fact that the timber industry, state and local government associations, and most of the environmental community generally support reimbursement, the prospects for action remain uncertain.

This report provides an analysis of which municipalities within the Adirondack Park would be eligible for state reimbursement if it happens. The report also documents the significant shift in tax burden in some Adirondack towns and the continued growth of enrollment within the Adirondack Park.

This study also provides recommendations for reforms of the existing forest tax programs. The recommendations are based on stakeholder interviews conducted by the Adirondack Council and a review of numerous reports and records of the program.

¹ The 2002 New York State Open Space Conservation Plan estimated that 815,000 acres are enrolled in the 480 program, and 538,000 acres are enrolled in the 480-a program. Published by NYSDEC, 2002.

SECTIONS 480 AND 480-A OF THE REAL PROPERTY TAX LAW - A BRIEF HISTORY

Section 480

The Fisher Forest Tax Law was first enacted in 1926, and some version has been in existence since that time. In 1956, the State Legislature crafted Section 480 of the Real Property Tax Law. Section 480 allowed private landowners of 15 acres or more of forest land to be eligible for a partial tax exemption on their land upon receipt of the approval by the Conservation Department. The assessed value of the land was “frozen” at the time of enrollment and assessed on the basis of the bare value of the land alone, exclusive of the value of the standing timber.² Owners can withdraw from the program at any time by paying a penalty equal to 6% of the value of the standing timber.

The 480 program proved to be inadequate. The program was intended to provide tax relief while a marketable forest crop was grown, but many landowners were not harvesting their forests at all. DEC employees were not given the right to enter the land for supervision. There was a growing fear that land speculators could take advantage of the program. Since landowners could withdraw at any time by paying a modest penalty, there was concern that landowners who intended to develop their property could “park” their holdings in the program, and evade property taxes in the interim.

The fiscal impact of the program on local governments also became a worry. Within ten years, over 500,000 acres had been enrolled just in the Adirondack Park and that number was rapidly growing. Local governments, frustrated about losing tax revenue, sought ways to compensate the loss, such as taxing participants for their “lakefront” property, but the landowners challenged this and the towns lost in court.³ As pending applications from landowners swelled to a record high, a new tax abatement program was created by the State Legislature in 1974.

Enrollment in the 480 program was immediately closed on September 1, 1974. Applications for over 110,000 acres were pending at the time and those landowners were shut out.⁴ The tax break for the current landowners did not end, however. In a compromise, landowners already enrolled in the flawed program could remain or transfer to the new program, if they chose. Not surprisingly, few landowners transferred.

² Subject only to a community-wide revaluation.

³ *Whitney Industries, Inc. v Board of Assessors* (1965) 48 Misc.2nd. 422, 265 NYS 2nd 1.

⁴ Memorandum of Thomas McGrath to Hon. Michael Whiteman, Counsel to Governor Malcolm Wilson, May 28, 1974.

Section 480-a

The new forest protection program, section 480-a of the Real Property Tax Law, did not go into effect until 1976. The new law has some important differences from its predecessor. Under the new 480-a program, landowners are now required to possess not 15, but 50 acres or more of contiguous forest land to be eligible. Instead of a “frozen” tax assessment, the landowners are now entitled to a tax abatement of up to 80% of the assessed value.⁵ Most importantly, enrollment in the new program means that the owners agree to keep the land in active timber production for the next ten years, a pledge to which the landowners are legally bound and need to renew every year to retain the tax exemption. Early withdrawal from the program or conversion of the land is subject to a substantial penalty of several times what the property owners have saved in taxes.

Another difference between 480 and 480-a is that the landowners have to provide a fifteen-year timber harvesting plan to DEC that the owners have to follow while enrolled. The personnel at DEC must approve the timber harvesting plans, as well as any subsequent plan changes or modifications. The landowners renew the commitment to the program and the plan on an annual basis, and there is a required review of the management plan every five years. The landowners also agree to allow access to the land for inspection.

Step-by-Step Process of Enrollment in the 480-a Forest Taxation Program

Landowners whose property meets the 50-acre forested land requirement must obtain and submit an Application for Certificate of Approval to the DEC. Enrolling in the program requires annual renewal of a commitment to timber harvesting for the subsequent ten years. The landowners are responsible for hiring a private consulting forester to draw up the initial fifteen-year timber harvest management plan. At least two copies of a forest management plan and two copies of a type and location map of the eligible tract must be submitted with a notarized copy of the Application for Certificate of Approval to the DEC. The DEC Regional Foresters are responsible for approving management plans submitted by landowners within 60 days of receipt of the application and are charged with drafting 15-year work schedules, which landowners are directed to follow.

The 15-year work schedules in approved forest management plans outline a detailed schedule of commercial cuttings. Thirty days prior to a commercial cutting, the owners are responsible for notifying the DEC by submission of a Notice of Commercial Cutting. The DEC approves the commercial cutting and the regional forester certifies the stumpage value⁶ within 15 days and notifies the owners and county treasurer’s office of that value. No later than 30 days after DEC certifies the value of the harvest, the owners

⁵ The law provides for the tax abatement to be the lesser of 1) 80% of the assessed value or 2) the amount by which the assessed value of the eligible acreage exceeds \$40 multiplied by the latest state equalization rate (or special equalization rate) times the number of eligible acres.

⁶ DEC regulations define stumpage value as the current fair market value of a merchantable forest crop as it stands prior to the time of cutting or removal. Section 199.1(z).

must pay a stumpage fee reflecting six percent of the value to the county treasurer's office. The county treasurer apportions the stumpage fees to the local towns and school districts.

To receive the tax abatement the landowners are responsible for filing for a real property tax exemption with a local assessor, and for filing and submitting a copy of their Commitment of Land to Continued Forest Crop Production and Certificate of Approval to the assessor and county clerk's office. Each subsequent year, the landowners must renew the 10-year commitment to timber production on their land by filing a Commitment of Land to Continued Forest Crop certified by the DEC. Renewing the commitment is required for receiving continued forest tax abatements. Additionally, owners are required to conduct a review of the management plan every five years to reflect any changes from the initial certification of the land.

FLAWS IN THE FOREST TAX LAWS

Staff at the Adirondack Council launched a comprehensive review of the current state of the forest tax abatement programs in the Adirondack Park. The Council used our own extensive files and also sought to obtain records from the DEC through the New York State Freedom of Information Act.⁷ Adirondack Council staff and students in our Clarence Petty Internship Program conducted dozens of interviews from October 2003 to December 2003 with a variety of individuals, including participants in the programs and staff in government agencies.

These interviews revealed major problems with the 480 and 480-a programs. Problems consistently identified included the lack of reimbursement to localities; the failure to pay stumpage fees; the lack of adequate staff at DEC to administer the programs; and the requirement that landowners must commit to timber harvesting to enroll in the program. While the lack of adequate enforcement, which fueled the revision of the old 480 program, troubled local officials and DEC employees, most industrial landowners felt that DEC oversight of forest management plans is cumbersome and unnecessary for companies with professional foresters on staff.

Many of these concerns echo reservations expressed thirty years ago. They were addressed in letters delivered to the Governor of New York State prior to his signing of the 1974 amendments into law. Many commentators thought that the 480-a program was intended to be a “first step” in the process of equalizing the heavy tax burden of owning land, and improving upon the existing law.⁸ Municipal associations expressed concern about the future economic impact of the failure to reimburse localities.⁹ One commentator stated flatly “No one seems to know why 6% was chosen for the Fisher Act or retained in the proposed bill” and recommended that the stumpage fees be paid directly to the state.¹⁰ The fledgling Adirondack Park Agency (APA), however, noted the value of the forest tax program to the protection of open space in the Adirondacks.¹¹

State Reimbursement To Localities

The failure to provide state reimbursement to local governments remains a primary concern of landowners and foresters as well as individual municipal officials.

⁷ After consultation with DEC staff, our efforts to obtain records on 480 and 480-a, which they maintained would take months to assemble, were deferred in favor of a review of the files of the 480-a program, which DEC staff felt were more readily accessible. In the first four months, only the files for three counties were made available. The records were reviewed by DEC staff prior to their release. Some records were redacted. Other documents, including a timber management plan, were withheld by DEC at the request of one corporate landowner for their “potential to disclose corporate secrets.”

⁸ Memorandum from Thomas McGrath, State Board of Equalization and Assessment to Hon. Michael Whiteman, Counsel to Governor Malcolm Wilson, May 28, 1974.

⁹ Memorandum from Donald Walsh, Counsel, New York Conference of Mayors, to M. Whiteman, esq. May 28, 1974.

¹⁰ T. McGrath to M. Whiteman, May 28, 1974.

¹¹ Memorandum by Richard Persico, Executive Director, Adirondack Park Agency, dated May 30, 1974.

The percentage of the tax base of municipalities exempted by the 480 and 480-a program within the Adirondack Park are illustrated in Table 1.

More than one third of the 92 towns within the Adirondack Park have more than one percent of the value of their property tax base exempt from taxation through either the 480 or 480-a programs. Several of these towns are losing five percent or more of their local tax revenue to the state abatement program.

In 1996, the Adirondack Council utilized a foundation grant to produce a report entitled *Property Taxes, Growth & Land Conservation in the Adirondacks*. The report, compiled by Ad Hoc Associates, found that the 480 and 480-a programs were undermining the fiscal stability of many towns. The report recommended that the state reimburse towns for lands enrolled in 480 or 480-a in order to spread the cost of the programs throughout the state.

Based on research conducted in 1998, the Nature Conservancy¹² estimated that more than half of the local school districts and towns statewide whose tax shift exceeds one percent from enrollments in the forest program are located in the Adirondack Park. Those school districts and municipalities within the Park would receive about 68% of a statewide reimbursement in dollar terms.

Administration

The law places the administration of the programs with the DEC. Currently the DEC does not have adequate staff to properly manage the forest tax programs. There is only one employee on the program staff at the DEC main office in Albany. Regional offices that once had foresters for each county now have one per DEC region. State foresters complain that random checks of enrolled land are no longer feasible.¹³ Field visits to evaluate the potential existence of threatened or endangered plant or animal species are rarely conducted by DEC professionals. Instead, consulting foresters check a map at regional headquarters. One private forester noted the increasing pressures from the DEC to shift some of the responsibility of enforcement to private and consulting foresters. It is evident that more program staff is needed in order for DEC to monitor the programs properly.

Management Plans

Industrial owners of timber lands find the management plans required by the 480-a program problematic. In their view, the need to obtain approval from DEC personnel prior to making changes in their plan inhibits their ability to be flexible to market conditions and natural disasters like ice storms that unexpectedly down harvestable timber. The larger industrial owners also believe that they have professionals on staff that are as qualified, if not more qualified, than DEC staff to make these judgments.

¹² Letter to state legislators from director Andy Beers, 1998.

¹³ One of the more important changes made in 1974 was to require DEC access to enrolled lands in the 480-a program. 480 has no such requirement.

Company participation in a national “sustainable harvesting” program with third party certification makes the state management plan, in their minds, an unnecessary layer of bureaucracy. Private foresters as well as DEC regional foresters indicated that many resent government oversight of their land management, and the “inflexible and intrusive nature” of the management plans themselves.

A review of timber management plans on file at DEC offices for Saratoga, Warren, Washington and Clinton counties found that a majority of management plans submitted by consulting foresters for smaller landowners do not call for timber harvesting for the foreseeable future. Their plans do not call for cutting at all. While it does take time for trees to grow and managing for “old growth” forests can be a goal under the timber management plan, it is reasonable to assume that some consulting foresters may be preparing plans that reflect their clients desire not to harvest timber. While state regulations allow the DEC to force a harvest, even under the 480 program, the density of growth necessary to trigger a state mandated harvest is very high and rarely seen in the field.

Management plans currently do not effectively consider the effect of harvesting practices or other land uses on the natural resources of the lands enrolled in the program. “Compatible or supportive uses” are allowed on eligible parcels unless it “precludes forest crop production.” While Christmas tree plantations might be a desirable compatible use, other uses have the capacity to degrade the resources of the land. Landowners who choose to put cabins or similar non -forest use structures on their enrolled lands are required to pull one acre surrounding the structure out of the tax abatement program. The surrounding lands remain in the program. Neither the DEC nor the APA review the primary or secondary impacts of recreational leasing as part of the approval of management plans. For example, the building of structures or roadways and their impact on water quality and other natural resources of the land are not examined.

Cabin and recreational leasing have become important sources of revenue for large commercial landowners, often producing as much or more revenue than the sale of forest crops on a parcel. But the lack of oversight during the siting of roads and the construction of cabins is apparent in several high profile land transactions in recent years.¹⁴ The APA has scant authority to regulate forest road construction and no jurisdiction over clear-cutting of forest land up to 25 acres. The DEC does have additional authority under the 480-a program to further regulate forest harvesting practices and the siting of roads and structures, but so far has chosen not to exercise it.

Enrollment

The latest statewide data available for the percentage of eligible landowners actually enrolled in the 480-a program is from 1992. The data reveals that only four

¹⁴ Often the extent of development for recreational leasing is not apparent until a pending sale of the land requires an APA permit. In the past several years, Champion International was fined by the APA for numerous violations of setback and water quality violations. International Paper has a yet unresolved APA enforcement issue regarding cabin construction on lands it recently sold.

percent of eligible landowners in New York State were actually enrolled in the program. Enrollments are highest in the Adirondack Park. Most other enrolled parcels lie within the Catskill Park and the New York City Watershed - in other words, in the twelve counties designated by the State Legislature as the “forest preserve counties.”¹⁵

There could be a number of reasons for the low enrollment outside of the Adirondack Park. State and consulting foresters cite reluctance by landowners to shift the tax burden onto others in the community, but there is little hard evidence for this assertion. The transaction costs for compliance could be an important factor leading to low enrollment. Landowners are required to hire a private consulting forester which can cost anywhere between \$4.00- \$10.00 an acre for enrolled land. The additional burden of annual renewals and periodic updates of management plans may also be nuisance factors.

The requirement to pledge a binding commitment for ten years may by itself deter many landowners, although this may be a desirable aspect of the program that discourages land speculation. Another potential cause for low enrollment, which may be useful to further examine, is the need to dedicate land to active forest crop production.

Large commercial timber interests, hunting and fishing clubs and large estate owners own the majority of the enrolled acreage within the Adirondack Park. Certainly the obstacles to enrollment for landowners statewide also deter many landowners within the Adirondacks. There is anecdotal evidence that some landowners inside the Park are reluctant to enroll because of the shift of the tax burden in their local community. But enrollments within the Adirondack Park are up. Most observers believe that recent enrollments reflect changes in the valuation of forested land in the Adirondack Park by state and local assessors. These new assessments are forcing some smaller landowners to take financial refuge in the tax abatement program.

The current 480-a program is intended to promote forest crop production and does not recognize other values of open space. The economic value of open space recreation and the preservation of aesthetic beauty for tourism within the Adirondack Park is not a consideration, nor is the need for protection of sensitive species habitat¹⁶ and wildlife migratory corridors. Incorporating these other values into the forest tax programs will allow a variety of landowners to participate, expanding the potential for the programs to serve a broader role as an open space protection program.

Stumpage Fees

One forester told our researchers, when the forest tax programs originated, the stumpage value of the forest crop was often much higher than the tax revenue from the parcel. Even 6% of the stumpage value meant serious dollars to the local community.

¹⁵ ECL, Article 9, Title I

¹⁶ A narrative listing of endangered and threatened species known to exist on the eligible tract is currently required in management plans.

Over time, the land value has gone up and relatively speaking, the value of the 6% stumpage fee has declined.

Adirondack Council staff investigated the procedures in place for collecting and apportioning stumpage fees. County treasurers, town assessors, regional foresters and the DEC program staff gave different answers when asked, “Who is responsible for notifying the DEC of failure of payment?” It is clear that assigned roles in administering the programs are vague and often confusing for the participants.

The county treasurers are responsible for collecting and apportioning the stumpage fees levied on all commercial cuttings done in compliance with an approved management plan. Several county treasurer offices reported that the payments of stumpage fees were “small and infrequent.” Amounts vary and arrive randomly, making it impossible to incorporate them into budgeting and planning.

Several county treasurers we interviewed did not know whose responsibility it was to collect and apportion the stumpage fees, and others were unaware of any records of such collections. One treasurer could only recall payment of one stumpage fee in ten years, and their office had no idea of what to do with it. Another treasurer suggested a state-issued flow chart of responsibility as a way to delegate tasks to each participant.

The overwhelming sentiment from town assessors was a suspicion that stumpage fees were simply not being paid. Others complained that the procedures for prior notification of harvesting are routinely ignored, and the lack of enforcement underscored their concern that harvests are under-reported.

RECENT EFFORTS TO REFORM THE FOREST TAX LAWS

In November of 1992, the State Board of Equalization and Assessment ¹⁷ (E&A), issued a report entitled *the 480-a Forest Taxation Program: Utilization, Administration and Fiscal Impact*. The report made four primary recommendations for reforms:

- Increase technical assistance to small non-industrial owners to participate in the program.
- Relax the rather rigid process for state review of timber management plans.
- Accommodate open space protection by expanding eligibility to other management objectives than timber harvesting.
- Provide some level of reimbursement to localities.

In 1992, the State Senate and Assembly both passed legislation intended to reimburse localities. The Senate version provided full reimbursement from the general fund of the state. The Assembly version, which was part of a broader bill addressing Adirondack issues,¹⁸ proposed a new fee on docks, mooring and large boats in the Adirondack Park. Those funds would returned to the local taxing entities in a form of revenue sharing in proportion to the amount of land devoted to agricultural or forest crop production in each town in the Adirondacks. The proposals were not reconciled.

The State Legislature responded to the E&A report in 1993. Legislation establishing the Environmental Protection Fund was amended to require the DEC, together with the E&A, to conduct hearings on the implementation of New York's forest tax laws and to report back to the State Legislature prior to the advent of the next legislative session.¹⁹ Five hearings were conducted in October 1993, with approximately one hundred comments received from the public.²⁰

The December 1993 joint report of the DEC and E&A, entitled *The Forest Tax Laws*, made a series of recommendations for reform including:

- Merger of the 480 and 480-a programs with eligibility retained for those enrolled in 480, with a transition of two years and then repeal of 480.
- Establishment of a program of state reimbursement recommended for towns with more than a 1% shift in the local tax base.
- Applying an 80% exemption for all properties enrolled including those formerly in 480. Encourage public access by increasing the tax exemption to more than 80% if public access is granted.

¹⁷ Now the Office of Real Property Services (ORPS).

¹⁸ A.965 Weprin et al. 1993.

¹⁹ Chapters 610,611 of the Laws of 1993.

²⁰ Joint Report of the New York State Department of Environmental Conservation and Board of Equalization and Assessment on the Forest Tax Laws, December 1993.

- Lower management oversight to avoid micromanagement and encourage forest stewardship plans where timber production would no longer be required to be the primary focus.
- Retaining tract size and the length of commitment as in 480-a.
- Resource features not currently included in eligible tracts such as rock outcrops, ponds, maple sugar bushes and Christmas tree plantations should become eligible.
- Stumpage fees should be maintained and collected by the state to offset the costs of reimbursement.
- Monitoring all future structural development to address the possible proliferation of cabins and home sites within and adjacent to certified tracts.

In 1994, Governor Mario Cuomo submitted legislation to the New York Senate and Assembly that would implement many of the proposed reforms. The proposal to eliminate the 480 program was strongly opposed by landowner associations in the Adirondacks and Catskills as well as the timber industry. No action was taken on any of the recommended reforms.

In 1998, Governor George Pataki proposed reimbursement for local governments that experienced a tax shift of one percent or more. The Forest Tax Coalition,²¹ a group of stakeholders that included the timber industry, environmental groups, local government associations and other interested parties, sought to advance the proposal in the State Legislature. The proposal died in the State Assembly. The following year, the Governor again proposed the reimbursement formula, with the funds coming from the Environmental Protection Fund, rather than general fund. That initiative did not receive the support of the stakeholders who had worked for passage only one year before, nor was it part of the final budget agreement. The following year, the Governor's proposed budget again included reimbursement from the Environmental Protection Fund and met the same fate as the previous year's attempt.

In 2001, Governor Pataki proposed reimbursement from the general fund for revenue lost by localities. Again, this proposal stalled in the budget process.

In his 2004-2005 budget submission, Governor Pataki seeks again to partially reimburse local governments and has proposed a new source of funding- a new registration fee for all-terrain vehicles. A diverse coalition has again called on the Governor and Legislature to provide reimbursement to affected local governments.²²

²¹ A letter in support of the partial reimbursement in the Executive Budget was sent to Governor Pataki, Speaker Silver in the Assembly and Majority Leader Bruno in the State Senate, and was signed by eighteen groups and organizations, including the Adirondack Council.

²² A letter in support of the partial reimbursement in the Executive Budget was sent to Governor Pataki, Speaker Silver in the Assembly and Majority Leader Bruno in the State Senate dated March 2, 2004 and was signed by twenty groups and organizations, including the Adirondack Council.

Legislation amending the 480-a program to include state reimbursement has passed the New York Senate each year from 1992-1996. The bills have remained in either the Senate Local Government or Ways and Means Committees in recent years. The New York State Assembly has not passed any such legislation. Most recently, Senator Elizabeth Little (R-Queensbury) and the late Assemblyman Jacob Gunther²³ proposed legislation (S.1415/A.3304) for the 2003-2004 legislative sessions. That legislation, as of April 1, 2004, remains in the committees in both houses.

²³ His widow, Aileen, was elected to serve out his term and is now the prime sponsor of A. 9493.

WORKING FORESTS: THE EASEMENT ALTERNATIVE

Conservation easements are agreements between a landowner and another party, usually a state agency or not-for-profit organization, that limits the uses of the land as a means to protect open space or some natural resource on the land. New York State legally recognized conservation easements almost twenty years ago.²⁴

Conservation easements have become a popular, less expensive method to accomplish open space protection. In most instances, the development rights of the property owner are transferred or severely limited. Those rights are usually purchased by, or donated to, the party holding the conservation easement on the property. Thus open space protection is achieved, without the additional expense of the full fee purchase of the land. Recreational rights are often an additional part of the deal.

Within the Adirondack Park, the State Legislature has determined that the state will pay taxes on the full value on the property rights of forest lands on which it holds easements, or owns. Property taxes paid by the state on Forest Preserve lands are an important source of revenue for Adirondack towns.²⁵

In the New York State Open Space Conservation Plan and in the eligible categories for funding in the Environmental Protection Fund (EPF), the State Legislature has created the “Working Forests” program. Working Forests consist of private lands that are engaged in the practice of forest crop production while the state holds conservation easements that limit development and in many cases provide limited public access. The easement specifically authorizes and, in some cases, also regulates the practice of forest crop production on the private holdings. The purchase of “working forest” easements in the Adirondack Park has expanded rapidly in recent years as large commercial landowners seek to reduce their tax burden.

The announcement on Earth Day in 2004 of a “working forest” conservation easement deal between the State of New York and the International Paper Company (IP) provides a ready illustration of the role of easements in the Adirondack Park. The deal, the largest of its kind in the history of the Park, calls for the sale of conservation easements by IP to the state on over 250,000 acres of land. That is approximately 10% of all private lands in the Adirondack Park. IP will continue to produce forest crops under a “sustainable harvesting” regime and the state will acquire the developments rights on all of the land along with the recreational rights on 80,000 acres.

Most of the land subject to the announcement is enrolled by IP in either the 480 or 480-a forest tax programs. Even if the State Legislature fails to reimburse localities for the timber tax abatement programs, this agreement will have a substantial, positive

²⁴ Title 3, Article 49 of the Environmental Conservation Law

²⁵ In Hamilton County, where the state owns the majority of land within the county, it is a critical source of tax revenue.

impact on the amount of tax revenue that will be received by affected communities. In the future, New York State will pay local property taxes on that portion of the value attributed to its newly acquired rights. The development rights on the properties can be worth 40% or more of the total taxable value. Recreational rights may add to that total .

Assuming that IP will remain enrolled in both forest tax programs, the obligation for future property taxes from the company will diminish, but the state will pay the difference. For example, if the parcel is enrolled by IP in the 480-a program, the local government may receive only 20% of the tax revenue it would otherwise receive on the lands. When the state acquires the development rights under the easement, the state will be obliged to pay a significant portion of the overall tax burden, in this example 40%, doubling the revenue to the town. IP will still pay 20% of the remaining tax burden (20% of 60%). The local government will not be reimbursed for the remainder.

For most landowners, the sale or gift of a conservation easement is an important tool for land use planning, but it may not be as attractive as enrollment in the forest tax programs. The key disadvantage of selling or giving up development rights under a conservation easement is that those rights are lost forever. Landowners currently enrolled in the 480 program receive substantial tax relief but can readily convert and develop their property by the payment of the stumpage fee. Landowners enrolled in the 480-a program face a substantial financial burden for early withdrawal but may convert after nine years without penalty.

The one attempt to date to merge the two concepts of conservation easements and forest tax abatement programs was developed by the DEC as part of the program bill advanced by Governor Mario Cuomo in 1994. That proposal called for a transition of all landowners enrolled in the 480 and 480-a programs into a new 480-b program. The new program would require a ten-year commitment by the enrolled landowners, as does the present 480-a program. But under the 480-b program, instead of landowners paying a financial penalty to withdraw early, their land would be subject to a rolling conservation easement that would suspend the development rights to their property for the full ten year term. The bill also would have imposed a right of first refusal for the purchase of the parcel to the State of New York should the landowner choose to sell.

RECOMMENDATIONS

The New York State Legislature should include in the 2004-2005 budget:

- Full state reimbursement to local governments and school districts in the Adirondack Park for lost tax revenue.
- Direct the collection of stumpage fees to the State of New York to help offset the cost of management.
- Require an application fee and an annual filing fee for the 480-a program.
- Additional resources for DEC to improve computer capability and staffing to reorganize the way information on the forest tax programs is stored and accessed, creating a uniform information database.

The New York State Legislature should establish a Joint Senate and Assembly Conference Committee to explore the establishment of a new forest tax abatement program in the Adirondack Park that would:

- Decrease the eligible acreage.
- Allow natural resource management for purposes other than just timber harvest.
- Permit wetlands, ponds, rocky outcroppings and other natural features to be included as eligible lands as well as key habitat areas and migratory corridors for wildlife.
- Change the stumpage fee structure.
- Expand tax relief beyond 80% for landowners willing to provide public access.
- Require a siting plan for the location of recreational leased cabins and the establishment of roadways.
- Eliminate the existing 480 and 480-a programs, allowing landowners to transition into a new program without penalty.

The Department of Environmental Conservation should use existing legal authority and amend its regulations to:

- Accept third party “green certified” sustainable harvesting programs as an alternative to timber management plans.
- Require a siting plan for the location of recreational leased cabins and the establishment of roadways as part of the current management plan.

CONCLUSION

Flawed from the outset, the state-mandated property tax abatement program for forest lands needs serious reform. This unfunded state mandate on local governments is increasingly disrupting the budgets of small towns in the Adirondack Park. The programs are unfairly and increasingly shifting the tax burden on over a million acres within those communities from large to small landowners.

The Department of Environmental Conservation (DEC) is understaffed. Enforcement is inadequate.

The program is failing to properly protect forest and water resources in the Adirondacks. Landowners can build leased cabins and access roads without review. State programs require detailed plans for forest crop production but fail to promote modern concepts of sustainable harvesting.

In 1992, state agencies admitted that they had few records and little information about what was happening on over 800,000 acres of land in the Adirondack Park enrolled in the forest tax abatement program between 1956 and 1976.

Little has changed. Management of the program continues to deteriorate, even as enrollments in the Adirondack Park steadily increase.

In 1993, the problems with the forest tax abatement laws were recognized by the State Legislature. The Legislature commissioned a state investigation and report, following a series of public hearings across New York. The following year, then Governor Mario Cuomo proposed a series of reforms that were not acted on by the legislature.

Since 1998, Governor George Pataki has sought authority from the State Legislature to reimburse local governments for the loss revenue from the tax abatement programs. To date, he has been unsuccessful.

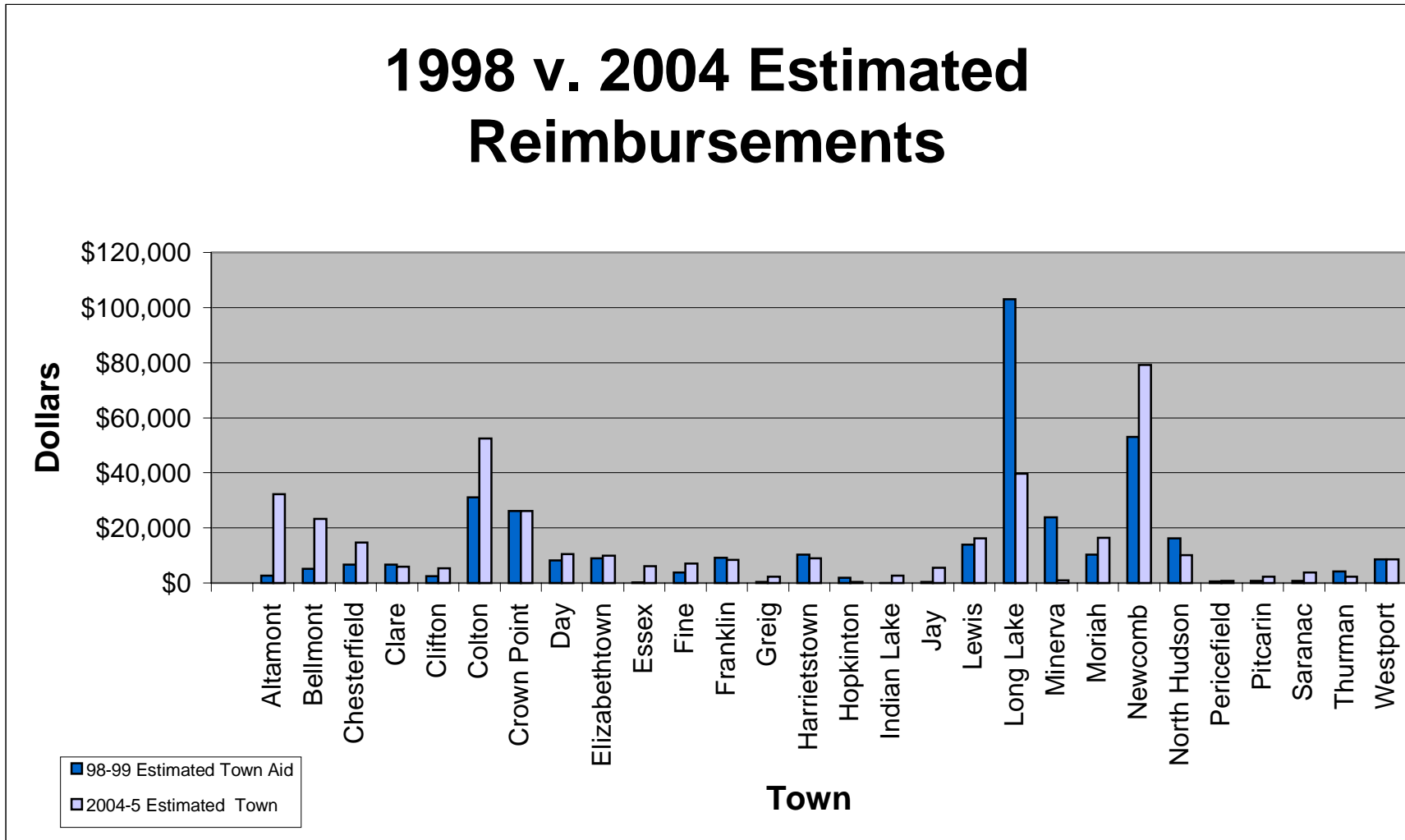
This report illustrates the continued need for reform and perhaps radical revision of how the State of New York approaches timber management and open space protection in the Adirondack Park.

Table 1
Estimated Reimbursements to Adirondack Park Towns

Town	County	Total Value of Exemptions (in thousands)	Percent of Muni Base Exempt	Town Tax Rate	Exempt Value Over 1% (in thousands)	Estimated Town Reimbursement
Altamont	Franklin	8365	3.5	0.54%	5975	\$32,265
Bellmont	Franklin	4810	6	0.58%	4008.3333	\$23,248
Black Brook	Clinton	334	1.4	0.75%	95.428571	\$716
Chesterfield	Essex	4288	4	0.46%	3216	\$14,794
Clare	St. Lawrence	1341	5	0.56%	1072.8	\$6,008
Clifton	St. Lawrence	2162	1.5	0.76%	720.66667	\$5,477
Colton	St. Lawrence	11020	4.3	0.62%	8457.2093	\$52,435
Crown Point	Essex	4205	5.9	0.75%	3492.2881	\$26,192
Day	Saratoga	5764	4.9	0.25%	4587.6735	\$11,469
Duane	Franklin	826	2.5	0.57%	495.6	\$2,825
Elizabethtown	Essex	2439	3.3	0.59%	1699.9091	\$10,029
Essex	Essex	1079	4.4	0.73%	833.77273	\$6,087
Fine	St. Lawrence	1608	1.7	1.08%	662.11765	\$7,151
Franklin	Franklin	2296	2.2	0.65%	1252.3636	\$8,140
Greig	Lewis	1459	1.7	0.38%	600.76471	\$2,283
Harrietstown	Franklin	8233	2	0.22%	4116.5	\$9,056
Hopkinton	St. Lawrence	1015	1.5	0.48%	338.33333	\$1,624
Indian Lake	Hamilton	3653	1.2	0.45%	608.83333	\$2,740
Jay	Essex	1701	1.6	0.89%	637.875	\$5,677
Lewis	Essex	3748	6.1	0.52%	3133.5738	\$16,295
Long Lake	Hamilton	14817	3.9	0.36%	11017.769	\$39,664
Minerva	Essex	1219	1.2	0.52%	203.16667	\$1,056
Morehouse	Hamilton	1843	2.8	0.38%	1184.7857	\$4,502
Moriah	Essex	2735	2.2	1.10%	1491.8182	\$16,410
Newcomb	Essex	10244	10.9	0.85%	9304.1835	\$79,086
North Hudson	Essex	3502	5.2	0.36%	2828.5385	\$10,183
Pericefield	St. Lawrence	832	1.3	0.39%	192	\$749
Pitcarin	St. Lawrence	696	2.5	0.55%	417.6	\$2,297
Saranac	Clinton	978	2.8	0.62%	628.71429	\$3,898
Thurman	Warren	1142	1.7	0.49%	470.23529	\$2,304
Webb	Herkimer	11557	2.7	0.25%	7276.6296	\$18,192
Westport	Essex	3094	2.7	0.44%	1948.0741	\$8,572
Willsboro	Essex	1895	1.2	0.42%	315.83333	\$1,327
Wilmington	Essex	893	1.2	0.64%	148.83333	\$953

Source: Office of Real Property Services

Table 2



Source: Office of Real Property Services

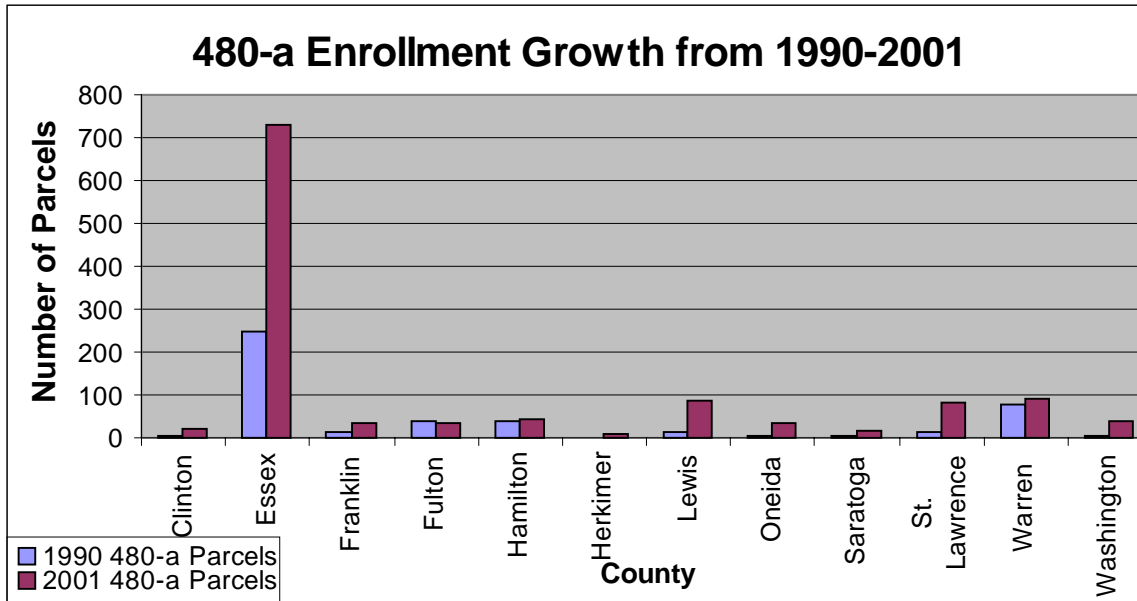
Table 3

1998-1999 and 2004-2005 Estimated Town Aid

Town	2001 480	2001 480- a	2001 Total	Total Muni	Exempt	2001	98-99	2004-5	Change
	Equalized	Equalized	Equalized	Value	Value	Town Tax	Estimated	Estimated	98-99 to
	Value	Value	Value	Exempt	Over 1%		Town Aid	Town Aid	2004-5
	(thousands)	(thousands)	(thousands)	(percent)	(thousands)				
Altamont	4272	4093	8365	3.5	5975	0.54%	\$2,747.00	\$32,265.00	\$29,518.00
Bellmont	4220	590	4810	6	4008.333	0.58%	\$5,263.00	\$23,248.33	\$17,985.33
Chesterfield	804	3484	4288	4	3216	0.46%	\$6,722.00	\$14,793.60	\$8,071.60
Clare	1315	26	1341	5	1072.8	0.56%	\$6,697.00	\$6,007.68	-\$689.32
Clifton	2065	97	2162	1.48	701.1892	0.76%	\$2,517.00	\$5,329.04	\$2,812.04
Colton	10972	48	11020	4.3	8457.209	0.62%	\$31,131.00	\$52,434.70	\$21,303.70
Crown Point	0	4205	4205	5.9	3492.288	0.75%	\$26,072.00	\$26,192.16	\$120.16
Day	5544	220	5764	4.9	4587.673	0.23%	\$8,211.00	\$10,551.65	\$2,340.65
Elizabethtown	126	2313	2439	3.31	1702.142	0.59%	\$8,991.00	\$10,042.64	\$1,051.64
Essex	436	643	1079	4.4	833.7727	0.73%	\$293.00	\$6,086.54	\$5,793.54
Fine	1057	551	1608	1.7	662.1176	1.08%	\$3,905.00	\$7,150.87	\$3,245.87
Franklin	2075	221	2296	2.3	1297.739	0.65%	\$9,142.00	\$8,435.30	-\$706.70
Greig	0	1459	1459	1.7	600	0.38%	\$430.00	\$2,283.00	\$1,853.00
Harrietstown	8163	70	8233	2	4116.5	0.22%	\$10,413.00	\$9,056.30	-\$1,356.70
Hopkinton	785	230	1015	1.5	338	0.48%	\$2,041.00	\$338.00	-\$1,703.00
Indian Lake	3560	93	3653	1.2	608.8333	0.45%	\$101.00	\$2,739.75	\$2,638.75
Jay	115	1586	1701	1.58	624.4177	0.89%	\$386.00	\$5,557.32	\$5,171.32
Lewis	241	3507	3748	6.1	3133.574	0.52%	\$14,014.00	\$16,294.58	\$2,280.58
Long Lake	5741	9076	14817	3.89	11008	0.36%	\$102,905.00	\$39,628.81	-\$63,276.19
Minerva	227	992	1219	1.2	203.1667	0.52%	\$23,893.00	\$1,056.47	-\$22,836.53
Moriah	46	2689	2735	2.2	1491.818	1.10%	\$10,250.00	\$16,350.33	\$6,100.33
Newcomb	9153	1091	10244	10.9	9304.183	0.85%	\$53,134.00	\$79,085.56	\$25,951.56
North Hudson	3336	166	3502	5.2	2828.538	0.36%	\$16,209.00	\$10,182.74	-\$6,026.26
Pericefield	832	0	832	1.3	192	0.39%	\$649.00	\$748.80	\$99.80
Pitcarin	0	696	696	2.5	417.6	0.55%	\$872.00	\$2,296.80	\$1,424.80
Saranac	978	0	978	2.8	628.7143	0.62%	\$732.00	\$3,898.03	\$3,166.03
Thurman	704	438	1142	1.7	470.2353	0.49%	\$4,297.00	\$2,304.15	-\$1,992.85
Westport	0	3094	3094	2.7	1948.074	0.44%	\$8,544.00	\$8,571.53	\$27.53

Source: Office of Real Property Services

Table 4



Source: Office of Real Property Services

Table 5. Parcel Summary for the Adirondack Park by County

Town	County	Number of Exemptions 480	Total Equalized Value of Parcels (in thousands) 480	Total Equalized Value of Exemptions (in thousands) 480	Number of Exemptions 480-a	Total Equalized Value of Parcels (in thousand) 480-a	Total Equalized Value of Exemptions (in thousands) 480-a
Black Brook	Clinton	2	267	20	2	418	314
Saranac	Clinton	3	3313	978	0	0	0
Ellenburg	Clinton	7	1360	237	7	149	77
Dannemora	Clinton	1	36	4	2	554	409
Au Sable	Clinton	0	0	0	4	136	96
Peru	Clinton	0	0	0	2	63	39
Totals:		13	4976	1239	17	1320	935

North Hudson	Essex	23	9558	3336	8	242	166
Newcomb	Essex	5	17909	9153	8	4667	1091
Crown point	Essex	0	0	0	134	6632	4205
Lewis	Essex	13	539	241	107	4760	3507
Chesterfield	Essex	21	1346	804	104	5840	3484
Westport	Essex	0	0	0	63	5146	3094
Minerva	Essex	4	335	227	3	1731	992
Essex	Essex	20	838	436	9	1497	643
Elizabethtown	Essex	5	228	126	76	3311	2313
Willsboro	Essex	16	1918	1232	20	1026	663
Jay	Essex	6	207	115	45	3018	1586
Wilmington	Essex	0	0	0	20	1356	893
Moriah	Essex	2	191	46	77	3843	2689
Keene	Essex	0	0	0	6	5118	265
Ticonderoga	Essex	0	0	0	50	1159	870
Schroon	Essex	2	28	6	0	0	0
Totals:		117	33097	15722	730	49346	26461

Duane	Franklin	0	0	0	3	1174	826
Bellmont	Franklin	196	9214	4220	6	1183	590
Franklin	Franklin	122	6487	2075	4	488	221
Altamont	Franklin	5	9020	4272	7	5924	4093
Harrietstown	Franklin	8	10424	8163	1	91	70
Santa Clara	Franklin	0	0	0	1	533	329
Waverly	Franklin	2	61	25	0	0	0
Totals:		333	35206	18755	22	9393	6129

Bleeker	Fulton	0	0	0	14	836	669
Oppenheim	Fulton	0	0	0	9	549	314
Mayfield	Fulton	7	1029	823	0	0	0
Caroga	Fulton	0	0	0	4	207	162
Stratford	Fulton	0	0	0	1	45	33
Johnstown	Fulton	0	0	0	6	229	181
Totals:		7	1029	823	34	1866	1359

Town	County	Number of Exemptions 480	Total Equalized Value of Exempt Parcels (in thousands) 480	Total Equalized Value of Exemptions (in thousands) 480	Number of Exemptions 480-a	Total Equalized Value of Exempt Parcels (in thousands) 480-a	Total Equalized Value of Exemptions (in thousands) 480-a
Morehouse	Hamilton	1	37	5	6	3638	1838
Long Lake	Hamilton	30	20267	5741	28	14.347	9076
Arietta	Hamilton	0	0	0	3	2039	944
Indian Lake	Hamilton	12	11732	3560	2	358	93
Lake Pleasant	Hamilton	0	0	0	4	1190	577
Benson	Hamilton	0	0	0	1	18	14
Hope	Hamilton	0	0	0	1	118	19
Totals:		43	32036	9306	45	7375.347	12561

Webb	Herkimer	0	0	0	6	1626	11557
Salisbury	Herkimer	0	0	0	3	940	310
Russia	Herkimer	0	0	0	1	39	31
Totals:		0	0	0	10	2605	11898

Greig	Lewis	0	0	0	24	2146	1459
Watson	Lewis	13	1772	559	0	0	0
Diana	Lewis	0	0	0	4	922	454
Lyonsdale	Lewis	0	0	0	5	322	196
Totals:		13	1772	559	33	3390	2109

Forestport	Oneida	0	0	0	19	1237	722
Remsen	Oneida	0	0	0	1	86	35
Totals:		0	0	0	20	1323	757

Day	Saratoga	3	5626	5544	4	231	220
Providence	Saratoga	13	432	217	3	472	364
Corinth	Saratoga	6	2983	2169	2	101	81
Edinburg	Saratoga	8	1120	211	4	322	248
Hadley	Saratoga	0	0	0	2	353	283
Greenfield	Saratoga	29	532	312	0	0	0
Totals:		59	10693	8453	15	1479	1196

Clare	St. Lawrence	4	10593	1315	1	48	26
Colton	St. Lawrence	16	19377	10972	1	97	48
Clifton	St. Lawrence	7	3661	2065	2	142	97
Pericefield	St. Lawrence	37	3438	832	0	0	0
Pitcarin	St. Lawrence	0	0	0	17	1283	696
Hopkinton	St. Lawrence	3	2247	785	13	378	230
Fine	St. Lawrence	29	1620	1057	17	823	551
Parishville	St. Lawrence	1	449	177	2	90	68
Lawrence	St. Lawrence	0	0	0	4	52	13
Totals:		97	41385	17203	57	2913	1729

Town	County	Number of Exemptions 480	Total Equalized Value of Exempt Parcels (in thousands) 480	Total Equalized Value of Exemptions (in thousands) 480	Number of Exemptions 480-a	Total Equalized Value of Exempt Parcels (in thousands) 480-a	Total Equalized Value of Exemptions (in thousands) 480-a
Thurman	Warren	32	1174	704	11	954	438
Chester	Warren	87	4013	2039	4	280	154
Lake Luzerne	Warren	10	588	299	53	1451	1161
Johnsburg	Warren	67	3037	1077	10	467	339
Horicon	Warren	17	1092	473	3	176	36
Bolton	Warren	28	2286	691	6	780	233
Warrensburg	Warren	40	1445	961	3	76	60
Lake George	Warren	25	1055	611	1	92	51
Queensbury	Warren	28	2164	1594	1	88	70
Stony Creek	Warren	4	101	41	0	0	0
Totals:		338	16955	8490	92	4364	2542
Dresden	Washington	10	1860	779	0	0	0
Fort Ann	Washington	0	0	0	5	667	507
Totals:		10	1860	779	5	667	507

Source: Office of Real Property Services

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